LEWIS AND ROCA LLP LAWYERS

Phoenix Office
40
Phone
Facsimile
Telephone (602) 262-5311

Facsimile (520) 622-3088
Telephone (520) 622-2090

Las Vegas Office
3993 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89109
Facsimile (702) 949-8398
Telephone (702) 949-8200

Thomas H. Campbell
Direct Dial: (602) 262-5723
Direct Fax: (602) 734-3841
Internet: TCampbell@lrlaw.com
Admitted in Arizona

0000077438

2001 JUN -8 P 4: 35

AZ CORP COMMISSION
DOCUMENT CONTROL

Our File Number 20390-00140

June 8, 2001

VIA HAND DELIVERY

Deborah Scott, Director
Arizona Corporation Commission
Utilities Division
1200 West Washington Street
Phoenix, AZ 85007

Arizona Corporation Commission
DOCKETED
JUN 0 8 2001
DOCKETED BY

Re: Slamming/Cramming Rules
Docket No: RT 00000J-99-0034

Dear Ms. Scott:

WorldCom, Inc. ("WorldCom" or "the Company") respectfully submits these comments in response to the May 22, 2001 request for comments on the Arizona Corporation Commission's Proposed Rules pertaining to slamming and cramming. Through several operating subsidiaries, WorldCom provides competitive long distance telecommunications services to its customers in Arizona and throughout the United States. Because these rules would impact the Company and the customers it serves, the Company has a substantial interest in the Proposed Rules. Accordingly, WorldCom is pleased to provide its perspective and offer comments on the issues set forth by the Commission for discussion. In addition, WorldCom looks forward to participating in the June 13, 2001 workshop.

I. BACKGROUND

WorldCom recognizes that the intentional, willful changing of a customer's primary or preferred interexchange carrier ("PIC") is an industry problem, and supports efforts to protect consumers from this practice. WorldCom and its customers are victims of "slamming" and, accordingly, WorldCom desires to cooperate with the Commission in every reasonable way to eliminate this practice. WorldCom has been an industry leader in developing and implementing third party verification ("TPV"), which has been used far more successfully and efficiently than letters of agency ("LOAs") to confirm authorization to change one's PIC and to bring consumers the benefits of competition.

WorldCom's Consumer Markets Quality Improvements Program,[1] implemented in June 2000, reaffirmed the company's commitment to quality sales, which involves accuracy in billing, representation of information and other issues besides "slamming." Telemarketing is the means primarily available to the consuming public in selecting a PIC from WorldCom. The company engages in annual quality training of its sales representatives (the vast majority of whom are employees of WorldCom) and certification by them that they understand and will abide by the company's code of conduct. Violation of that code results in a probation period and increased supervision, as well as, in some cases, termination. Both management and the representatives themselves are held financially accountable for customer complaints, including for the unauthorized changing of carriers. The program thus provides a monetary "upside" for sales that pass TPV, as well as a "downside" if quality standards are not met.

WorldCom's commitment to quality also includes a mandatory summarization by the sales representative at the end of each telemarketing call, which improves the customer's understanding of the rates he or she will receive. A verification process audits sales to ensure their accuracy prior to the PIC change at the local exchange carrier. Our TPV process has also been modified to increase customer involvement. When customers are telemarketed, they are required to state their names and telephone numbers (as distinguished from asking a new customer whether he is "Mr. John Jones" and whether his phone number is "NPA-XXX-XXXX"), thus helping to verify the customer's understanding.

Additional customer service staffing and quality initiatives by WorldCom also have resulted in fewer overall complaints. Besides the MCI Agency Escalations team that works to resolve complaints, the company has a Consumer Affairs organization, which closely monitors complaint trends, works to sustain and improve quality initiatives and acts as a resource for the Consumer Services divisions of state public utility commissions. The result is fewer escalations in Arizona and elsewhere, with very small ratios of complaints to customers. Typically, while thousands of Arizona residents take the opportunity each month to lower their phone bills and change their PICs to WorldCom, only a small fraction of those residents allege slamming. Accordingly, WorldCom supports initiatives to prevent slamming from occurring and for the appropriate remedy for slam allegations.

The Federal Communications Commission ("FCC") issued rules to implement section 258 of the Communications Act of 1934, as amended by the

---

1 Mass Markets is now referred to within the company as "MCI," to distinguish it from the business sales and network operations of the company. MCI has a separate management structure and focuses on residential consumers.

Telecommunications Act of 1996 ("FTA")[2] in its December 1998 *Section 258 Order*.[3] In response to concerns raised in petitions for reconsideration of the Order filed with the FCC and petitions for stay filed with the D.C. Circuit, the Commission issued a new set of rules in its *First Reconsideration Order*.[4] These modified rules ("FCC Slamming Rules" found at 47 CFR § 64.1100 et seq.) altered the administration of the liability rules from what the FCC initially had set forth in its *Section 258 Order*, in terms of both carrier obligations and procedures. Most significant was the transformation from the handling of consumer slamming allegations through an investigation and reimbursement procedure by a non-neutral party to the adjudication of complaints by the FCC, or, alternatively, by state agencies that have opted to administer the FCC's rules.

The FCC's regulations provide each of the states with the option to administer the FCC Slamming Rules. If a state does not elect to assume the primary role of enforcing the FCC Slamming Rules, the FCC will maintain that responsibility and, when doing so, the FCC will follow its own slamming rules within such state for slamming allegations within its jurisdiction. Therefore, although Arizona has not "opted-in" to the FCC rules, those rules still govern slamming allegations related to state-to-state long distance service.

II. Slam As A General Matter, The Proposed Rules Should More Closely Mirror the FCC's Rules

Like the FCC Slamming Rules, the intent of the Proposed Rules is to establish an unbiased process for resolving complaints, as well as provide carriers with strong incentives to comply with the Commission's verification requirements and compensate consumers for any unauthorized preferred carrier changes as quickly as possible. However, the Proposed Rules are inconsistent with the FCC's Slamming Rules in certain critical respects. In fact, the Proposed Rules, if implemented as currently drafted, would conflict in certain key areas with the FCC Slamming Rules, and result in

---

[2] 47 U.S.C. § 258. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (*FTA*).

[3] *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 94-129, (rel. Dec. 23, 1998)(*Section 258 Order*).

[4] *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, First Order On Reconsideration, CC Docket No. 94-129 (rel. May 3, 2000)(*First Reconsideration Order*).

significant financial and administrative obstacles for carriers. Thus, WorldCom provides the Commission with suggested changes to the Proposed Rules to ensure that they function optimally and comply with federal mandates.

The principal changes proposed by WorldCom would harmonize the Proposed Rules with federal law by providing that there is greater consistency and clarity regarding carriers' and subscribers' rights under both federal and state law. These modifications to the Proposed Rules are critical. Federal law requires that the Commission's procedures and liability provisions be consistent with the FCC's procedures. (47 U.S.C. § 258(b)). In its Section 258 order, the FCC addressed the issue of states developing their own slamming rules for intrastate services, and made it clear that state rules could not usurp federal requirements: "States must, however, write and interpret their statutes and regulations in a manner that is consistent with our rules and orders, as well as Section 258."[5] However, WorldCom does not ask the Commission for greater consistency for "consistency's sake" alone. First and foremost, WorldCom urges greater consistency because otherwise, consumers will be confused as to their rights and the obligations of carriers. Secondly, carriers operating in Arizona will be met with severe administrative costs and burdens and will not be able to resolve allegations of unauthorized changes as effectively. Therefore, WorldCom respectfully requests that the Commission revise the Proposed Rules in accordance with the recommendations set forth below in these comments.

Consumers' rates reflect, among other things, the carriers' costs of complying with regulatory requirements. State-specific obligations impose considerable cost and administrative burdens on national carriers. For example, carriers have to train their customer service representatives and other employees engaged in dispute resolution on different procedures and rules. This would make training and the employees' jobs more difficult, potentially causing confusion for carriers and consumers alike, as well as inconsistent results between states.

Besides the potential costs to carriers (and thus consumers), inconsistent slamming regulations may also create consumer confusion resulting from inconsistent consumer education efforts by federal and state regulatory agencies. Accordingly, WorldCom urges the Commission to harmonize the federal and state rules by adopting the FCC's slamming rules.

[5] Section 258 Order at par. 89.

III. WorldCom Recommends That The Commission Modify the Proposed Rules As Specified Herein.

A. R-14-2-1901:

The definitions set forth in this section contemplate paper transactions in the sales and PIC Freeze processes. There are numerous other methods of doing business in today's environment. For example, many consumers prefer the convenience of transacting business over the Internet. WorldCom is exploring creative ways of meeting its customers' needs. One of these plans is electronic authorization to lift PIC freezes and process sales, thereby negating the need for a three-way call between WorldCom, the consumer and the local exchange carrier. WorldCom would urge the Commission to include language in these proposed rules that would permit greater flexibility in addressing the needs of consumers in this process.

In addition, the WorldCom definition of "customer" included in the proposed rules is too restrictive and does not contemplate the reality of preferred carrier selection and/or service usage. For that reason, WorldCom would suggest that the Commission adopt a definition of "customer" that equates to the definition of "subscriber" in the FCC Slamming Rules. *See* 47 C.F.R. § 64.1100(h) (2001).

B. R-14-2-1905:

While many of the proposed provisions mirror the federal requirements on verification, the Proposed Rules vary from those requirements in certain key respects. As discussed more fully below, some of the proposed requirements are not entirely clear. Furthermore, some of the Proposed Rules either contradict the federal requirements or are more restrictive than the federal requirements. WorldCom notes specific concerns as follows:

B.5 – There seems to be an inconsistency between subsections B.4 and B.5 that should be reconciled. If authorization may not be combined with any inducement of any kind, then it is unclear how the authorization could be combined with promotional material. WorldCom would suggest deleting proposed B.5 and substituting the following: "Be written in the same language as used in the underlying sales transaction."

F.4 – This subsection appears to contradict the federal rules. Pursuant to federal requirements, the entire third party verification ("TPV") transaction must be recorded. If TPV is being used as the verification method, then the entire call must be taped.

F.5 - Again, this subsection appears to be inconsistent with the federal rules, or may simply require clarification. The federal rules state the information that must be elicited in a TPV call, but specifically decline to require set scripting. The substance of items a, b, and c are covered during the course of WorldCom's independent TPV calls; however, the proposed rule appears to mandate certain language in a certain order in the script. (WorldCom would also suggest that in 5.b. that the phrase "to switch the customer" be changed to "confirm the previously obtained authorization." The TPV agent does not switch the customer.) Item 5.d, again, should be deleted as the federal rules require that the entire third party verification transaction must be recorded.

I. - WorldCom objects to this proposed rule. As stated above, if TPV is the method of verification being used, the entire call must be taped. The TPV company has no discretion in this matter. If a customer objects to taping, then TPV must cancel the customer's order. There is no order to send back to the submitting carrier to permit the submitting carrier to offer a written authorization method.

K. - This is another example of a requirement more restrictive than that under the federal rules. "Subscriber" under the federal rules is defined as one of the following: (1) the party identified in the account records of a common carrier as responsible for payment of the telephone bill; (2) any adult person authorized by such party to change telecommunications services or to charge services to the account; or (3) any person contractually or otherwise lawfully authorized to represent such party. WorldCom would suggest that this definition be adopted for "Customer", and that this proposed rule be changed to read as follows: "A telecommunications company obtaining the authorization, by any method, of an individual to switch carriers shall confirm that the individual requesting the change is the Customer."

C. R-14-1906:

A. - Federal Truth-in-Billing rules already impose requirements regarding notification concerning new service providers. WorldCom feels that any proposed rule on this point should remain consistent with federal TIB rules. WorldCom therefore suggests the following revision to this proposed rule: "Where a billing agent is used to bill the services of a preferred telecommunications carrier, the telephone bill must clearly and conspicuously identify any change in service provider, including identification of charges from any new service provider. This definition shall include only providers that have a continuing relationship with the Customer that will result in periodic charges on the Customer's bill." WorldCom further notes that where a preferred telecommunications carrier does its own billing, there is no need for notification of new service provider, as the direct bill itself from a new carrier acts as notice.

B. – WorldCom requests clarification of this proposed rule. Within 10 business days of installing a new customer, WorldCom sends a welcome kit of fulfillment materials that describe the products and services purchased by the customer. It would appear that this information would meet the requirements of this proposed rule. To the extent that this proposed rule contemplates a separate notification purely regarding the change in carrier, WorldCom objects to this subsection as unnecessary.

D. R-14--2-1907:

A. WorldCom objects to this section. In contrast to the federal rules, the Proposed Rules require the alleged unauthorized carrier to take certain actions upon a slam allegation, prior to a finding that a slam has actually occurred. Specifically, the Proposed Rules would require, upon a slam allegation, that the alleged unauthorized carrier provide billing records and remit payment to the alleged authorized carrier. The FCC Slamming Rules expressly permit an alleged unauthorized carrier to attempt to satisfy consumers who have alleged a slam, prior to any adjudication. In addition, the FCC Slamming Rules provide that refunds or credits for paid charges are required only upon a finding that there was actually an unauthorized change, not merely upon an allegation of the same. (47 CFR § 64.1170 (b)) ("*If the relevant governmental agency determines after reasonable investigation that an unauthorized change . . . has occurred,* it shall issue an order directing the unauthorized carrier to forward to the authorized carrier. . . ")(emphasis added). In fact, in accordance with procedural due process principles, there appears to be no question in the FCC's orders that reimbursement is due only upon a showing of fault. As the FCC explains, "Thus, *once a state commission or the FCC has made a finding that a slam has occurred,* the unauthorized carrier will be required to disgorge to the authorized carrier an amount adequate to satisfy [compensation to the subscriber and authorized carrier]." Further, "Accordingly, *when* the state commission (or the FCC) determines that the alleged unauthorized carrier *did* slam the consumer, then it shall direct such carrier to forward to the authorized carrier 150% of the amounts collected by that slamming carrier from the subscriber." *See* First Reconsideration Order at par. 17 and 42, emphasis added. Most importantly, however, the FTA itself predicates carrier liability upon a finding that an unauthorized change occurred. (47 U.S.C. § 258(b)).

Under the Proposed Rules' liability scheme, however, the carrier is presumed guilty until proven innocent. This, of course, poses serious questions of fundamental fairness. Nowhere in the FCC Slamming Rules or First Reconsideration Order does the FCC purport to have the authority to force carriers to return monies *already received* upon a mere allegation of an unauthorized change. Indeed, the FCC has concluded that it would not have the authority to impose even the 30-day absolution provision against carriers alleged to have slammed in those situations where the subscriber has already paid charges. First Reconsideration Order at 41, Section 258 Order at 53. As such, saddling a carrier only alleged to have made an unauthorized change with the obligation to disgorge *any* monies collected would undoubtedly be beyond this Commission's authority.

Moreover, if even for the sake of argument one were to assume that the Commission had this authority, it would still be fundamentally unfair and unwise to impose these requirements on carriers. To comply with the Commission's rules, upon a *mere allegation* of an unauthorized change, the carrier alleged to have slammed the customer would be required to calculate the required portion to be returned to the subscriber, effectuate the refund by sending the subscriber a check or a credit, and then, if the Commission later absolved the carrier of any wrongdoing, re-bill the customer or reverse the credit for the amount that was refunded earlier. This reimbursement scheme would cause obvious customer confusion by virtue of the various refunds, credits, and subsequent billings and thereby create serious "truth-in-billing" issues for the carriers to address.

B. Although WorldCom agrees that a customer should not have its service suspended or disconnected simply because it disputes a billing change, WorldCom requests that the Commission clarify that it may suspend service if its investigation of a slam allegation finds that the allegation is specious.

E. R-14-2-1908:

WorldCom seeks clarification that this rule should apply only to LECs (WorldCom believes this to be the case as, among other requirements in the proposed rules, notification in white pages directories can only be done by LECs, and only a LEC can place a PIC freeze). Requiring a separate notice of these rights from an IXC when the information must be contained in telephone directories is unnecessary. If portions of this rule are to apply to LECs and other portions to all preferred telecommunications providers, clarification and revision of the proposed rule is needed. Finally, with respect to subsection F, the company believes that the notification should only be in the same language as that of the bill that the customer receives.

F. R-14-2-1909:

C. This subsection requires that customer information regarding a freeze shall clearly distinguish between intraLATA and interLATA services. WorldCom would recommend that the word "local" be inserted in addition to intraLATA and interLATA.

F – WorldCom requests clarification of this subsection. The proposed rule requires "verification" of a PIC freeze, but does not explain why such a verification is necessary, the manner in which that verification is to be obtained, or by whom.

G and H - WorldCom again would suggest to the Commission that additional methods of the lifting of PIC freezes, such as an electronic authorization, should be permissible under the proposed rules. Permitting the lifting of a PIC freeze only through a writing or verbal authorization is again stifling to consumers' desires. WorldCom also notes that H.2. does not appear to permit 3-way calls, a common method today of lifting PIC freezes. WorldCom needs further clarification as to what "conformation on verification data" means here.

J. – This subsection provides that a local exchange company shall not impose a freeze on local service on its own initiative. WorldCom suggests that this provision be expanded to include intraLATA and intrastate telecommunications services.

G. R-14-2-2001:

WorldCom also recognizes the gravity of the cramming problem, and believes that the implementation of the Federal Truth-in-Billing rules will go a long way toward ensuring that customers are not misled into paying for services that were not ordered, authorized or used. It is important, however, to acknowledge the fact that customers should be responsible for payment for those services the customer ordered, authorized or used. To ensure that customers not be misled and that service providers be appropriately paid, it is essential that the definition of "cramming" be carefully crafted.

Clearly, PICed services and related telecommunications charges should be excluded from any requirement under these proposed cramming rules. Services billed solely on a per-transaction basis, such as dial-around and directory assistance services should also be excluded from any requirement under these proposed cramming rules. When a customer accesses a product by dialing 1+, he is evincing a desire to use that product and should be responsible for payment for that use. These exclusions can be addressed by changing the definition of "cramming" to "any charge for goods or services on a customer's bill that were not ordered, authorized or used by the Customer." However, for clarity, the definition section should clearly set out the types of services to which these rules do not apply.

H. R-14-2-2004

A. - While WorldCom in principle supports pre-billing controls, it does object to subpart 3 of this Proposed Rule. In the case of a provider who retains a billing agent to handle inquiry, it is the toll-free number of the billing agent that is relevant to the consumer. That number is not always known to the service provider at the time of sale, but under Federal Truth-in-Billing, must appear on the bill itself.

I. R-14-2-2005

WorldCom seeks clarification of the applicability of this proposed rule. It is unclear whether the service provider must engage in these inquiries or whether it is contemplated that a TPV agent would seek this information. Many of these questions deal with the product content itself. The FCC has clearly stated that independent TPV companies must be independent from service providers' marketing arms (47 C.F.R. sec. 64.1120 (c)(3) (2001)). It is unclear to WorldCom how this proposed rule and 2-2006 are to work together.

J. R-14-2-2006

WorldCom notes that the proposed rule tracks the methods for verifying PIC changes. While there is no legal requirement to meet all of those requirements in situations where no PIC change occurs, WorldCom does not object to utilizing these types of confirmation methods. However, if these types of confirmation methods are to be used WorldCom, sees no reason to limit methods to a writing or to electronic authorization. Some form of taped third party confirmation should also be appropriate.

K. R-14-2-2007

WorldCom generally has no objection to the provisions of this proposed rule, but does have a few comments. First, in subpart C.1, a billing agent is apparently never permitted to suspend, disconnect or terminate services to a customer who disputes. If, upon investigation, the dispute is found to be specious, the billing (or providing) company should be permitted to take action against the customer who has no valid claim of dispute. WorldCom would request clarification on subpart D.2. If a company is using a billing agent to handle inquiry, then the billing agent would have this information, not the providing company. For that reason A.5 is a logical reporting requirement. WorldCom would request that the requirements of D.2 be placed only on those companies doing their own billing and inquiry.

M. R.14.-2-2008

As noted in our discussion of slamming, these rules appear directed at the LECs. If the purpose is also to include CLECs, this may be the topic of further discussion at the workshop.

WorldCom appreciates the opportunities provided to present its comments and inputs. It looks forward to participating in the upcoming June 13, 2001 workshop and reviewing the next draft of the rules.

Very truly yours,

Michael Hallam for

Thomas H. Campbell
LEWIS AND ROCA LLP
40 N. Central Avenue
Phoenix, AZ 85004

- AND –

Teresa Tan, Senior Counsel
WorldCom, Inc.
201 Spear Street, Dept. 9976
San Francisco, CA 94105

Attorneys for WorldCom, Inc.

THC/bjg
(Original and 10 copies for filing attached)

cc: Chairman William A. Mundell
Commissioner Jim Irvin
Commissioner Marc Spitzer
Paul Bullis, Chief Counsel, Public Advocacy Section, Office of the Attorney General